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November 2, 2006

FILED ELECTRONICALLY AND ORIGINAL VIA 1st CLASS MAIL SERVICE

The Honorable Charles L.A. Terreni
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp.,
NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III
LLC, and Xspedius [Affiliates] of an Interconnection Agreement with
BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the
Communications Act of 1934, as Amended
Docket No. 2005-57-C, Our File No. 803-10208

Dear Mr. Terreni:

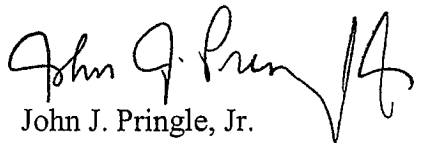
Enclosed is the original and one copy of the **Opposition to Petition for Reconsideration** for filing on behalf of the Joint Petitioners in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the enclosed envelope.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,



John J. Pringle, Jr.

JJP/cr

cc:

all parties of record

Enclosures

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

**BEFORE THE PUBLIC SERVICE COMMISSION
SOUTH CAROLINA**

IN RE:

JOINT PETITION FOR ARBITRATION OF NEWSOUTH)	
COMMUNICATIONS CORP., NUVOX COMMUNICATIONS,)	
INC., KMC TELECOM V, INC., KMC TELECOM III LLC,)	
AND XSPEDIUS [AFFILIATES] OF AN)	Docket No.
INTERCONNECTION AGREEMENT WITH BELL SOUTH)	2005-57-C
TELECOMMUNICATIONS, INC. PURSUANT TO)	
SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934,)	
AS AMENDED)	
)	

**OPPOSITION TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
PETITION FOR RECONSIDERATION**

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November 2, 2006

**BEFORE THE PUBLIC SERVICE COMMISSION
SOUTH CAROLINA**

IN RE:

JOINT PETITION FOR ARBITRATION OF NEWSOUTH)	
COMMUNICATIONS CORP., NUVOX COMMUNICATIONS,)	
INC., KMC TELECOM V, INC., KMC TELECOM III LLC,)	
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INTERCONNECTION AGREEMENT WITH BELL SOUTH)	2005-57-C
TELECOMMUNICATIONS, INC. PURSUANT TO)	
SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934,)	
AS AMENDED)	
)	

**OPPOSITION TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
PETITION FOR RECONSIDERATION**

NuVox Communications, Inc. ("NuVox") and Xspedius Communications, LLC, with its operating subsidiaries ("Xspedius"), collectively the "Joint Petitioners," hereby file this opposition to BellSouth Telecommunications, Inc.'s Petition for Reconsideration, which was filed in this docket October 23, 2006 ("Petition"). In its *Order Ruling on Arbitration*, the Commission concluded for Issue 101 (*i.e.*, maximum deposit amount) that BellSouth's financial risk is properly addressed by the maximum deposit provision BellSouth already agreed to with ITC^DeltaCom.¹ BellSouth petitions the Commission for reconsideration of Issue 101 and requests that the Commission establish a two-months' maximum security deposit cap for Joint Petitioners.² The premise of BellSouth's request is that the ITC^DeltaCom agreement contains "several significant financial criteria-related terms that are not contained in the Joint Petitioners'

¹ *Joint Petition for Arbitration on Behalf of NewSouth Communications Corp. Et al. of an Interconnection Agreement with Bellsouth Telecommunications, Inc.*, Docket No. 2005-57-C, Order Ruling on Arbitration at 28, Order No. 2006-531 (South Carolina P.S.C. Oct. 13, 2005) ("*Order Ruling on Arbitration*").

² Petition at 1.

interconnection agreement.”³ As Joint Petitioners demonstrate herein, this argument is hollow. Accordingly, the Commission therefore should deny BellSouth’s Petition.

ARGUMENT

BellSouth sets forth in its Petition several financial criteria included in the ITC^DeltaCom agreement, arguing that “in exchange for DeltaCom agreeing to these financial criteria that reduce BellSouth’s risk of non-payment, BellSouth agreed to the lower maximum security deposit that appears in ITC^DeltaCom’s interconnection agreement.”⁴ BellSouth’s reference to its negotiations with ITC^DeltaCom is improper and should be dismissed, as the Commission should not rely on BellSouth’s unsupportable claim that ITC^DeltaCom’s acceptance of these terms was the one-and-only reason BellSouth agreed to the lesser deposit provision. There are many other factors in the ITC^DeltaCom/BellSouth negotiations that may have led to BellSouth agreeing to a lower deposit for DeltaCom. For instance, there may have been another provision (unrelated to deposits) where the parties were at an impasse, and ITC^DeltaCom agreed to take BellSouth’s language there in exchange for BellSouth agreeing to the lower maximum deposit provision. That the referenced “financial criteria” are tangential to the maximum deposit provision is inconsequential, especially when the entirety of the ITC^DeltaCom negotiation is unknown and is not part of the record in this proceeding. For this reason alone, the Commission should deny BellSouth’s request for reconsideration.

Another reason for denying BellSouth’s request is that, although the financial criteria referenced in the Petition (*i.e.*, the ITC^DeltaCom provisions) is not identical to the financial criteria in the subject agreement, BellSouth and Joint Petitioners voluntarily negotiated

³ Petition at 2.

⁴ Petition at 2-3.

and agreed upon a similar list of financial criteria, despite failing to agree on a discrete maximum deposit provision. Thus, that the financial criteria in the ITC^DeltaCom agreement differ from those voluntarily negotiated and agreed to for the Joint Petitioners' interconnection agreements provides no cause for the Commission to reconsider its initial finding on this issue.

The subject Joint Petitioner/BellSouth agreements incorporate the following financial criteria:

BellSouth reserves the right to secure the accounts of new CLECs (entities with no existing relationship with BellSouth for the purchase of wholesale services as of the Effective Date) and existing CLECs (entities with an existing relationship with BellSouth for the purchase of wholesale services as of the Effective Date) with a suitable form of security pursuant to this Section. <<customer_short_name>> may satisfy the requirements of this Section through the presentation of a payment guarantee with terms acceptable to BellSouth executed by a company with a credit rating of greater than or equal to 5A1. Upon request, <<customer_short_name>> shall complete a credit profile and provide in the form attached hereto as Exhibit B.⁵

With the exception of new CLECs with a D&B credit rating equal to 5A1, BellSouth may secure the accounts of all new CLECs consistent with the terms set forth in subsection 1.8.2. Further, if <<customer_short_name>> has filed for bankruptcy protection within twelve (12) months prior to the Effective Date of this Agreement, BellSouth may treat <<customer_short_name>>, for purposes of establishing security on its accounts, as a new CLEC as set forth in subsection 1.8.5.⁶

The security required by BellSouth shall take the form of cash, an Irrevocable Letter of Credit (BellSouth Form or substantially similar in substantive parts to the BellSouth Form), Surety Bond (BellSouth Form or substantially similar in substantive parts to the BellSouth Form).⁷

Any such security shall in no way release <customer_short_name> from its obligation to make complete and timely payments of its bills, subject to the bill dispute procedures set forth in Section 2.⁸

⁵ Attachment 7; Section 1.8.

⁶ Attachment 7; Section 1.8.1.

⁷ Attachment 7; Section 1.8.2.

⁸ Attachment 7; Section 1.8.4.

BellSouth may secure the accounts of existing CLECs where an existing CLEC does not meet the following factors:⁹

<<customer_short_name>> must have a good payment history, based upon the preceding twelve (12) month period. A good payment history shall mean that less than 10% of the non-disputed receivable balance is received over thirty (30) calendar days past the Due Date.¹⁰

The existing CLEC's liquidity status, based upon a review of EBITDA, is EBITDA positive for the prior four (4) quarters of financials (at least one of which must be an audited financial report) excluding any nonrecurring charges or special restructuring charges.¹¹

If the existing CLEC has a current bond rating, such CLEC must have a bond rating of BBB or above or the existing CLEC has a current bond rating between CCC and BB and meets the following criteria for the last Fiscal Year End and for the prior four (4) quarters of reported financials:¹²

Free cash flow positive;¹³

Positive tangible net worth;¹⁴ and

Debt/tangible net worth rating of 2.5 or better.¹⁵

Subject to Section 1.8.7 following, in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section within thirty (30) calendar days of <<customer_short_name>>'s receipt of such request, service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).¹⁶

⁹ Attachment 7; Section 1.8.5.

¹⁰ Attachment 7; Section 1.8.5.1

¹¹ Attachment 7; Section 1.8.5.2.

¹² Attachment 7; Section 1.8.5.3.

¹³ Attachment 7; Section 1.8.5.3.1.

¹⁴ Attachment 7; Section 1.8.5.3.2.

¹⁵ Attachment 7; Section 1.8.5.3.3.

¹⁶ Attachment 7; Section 1.8.6 (as ordered by the Commission, *Order Ruling on Arbitration* at 31; subject to Joint Petitioners' Petition for Reconsideration, at 27-28).

The Parties will work together to determine the need for or amount of a reasonable deposit. If the Parties are unable to agree on a request for additional amounts or a deposit refund, either Party may file a petition for resolution of the dispute and both Parties shall cooperatively seek expedited resolution of such dispute. During the pendency of such a proceeding, the Commission may, with reasonable discretion, require posting of a bond for 50% of the disputed amount during the pendency of the proceeding.¹⁷

At any such time as the provision of services to <customer_short_name> is terminated pursuant to Section 1.7, the amount of the deposit will be credited against <<customer_short_name>>'s account(s) and any credit balance that may remain will be refunded immediately.¹⁸

Subject to a standard of commercial reasonableness, if a material change in the circumstances of <<customer_short_name>> so warrants and/or gross monthly billing has increased more than 25% beyond the level most recently used to determine the level of security deposit, BellSouth reserves the right to request additional security subject to the criteria set forth herein this Section 1.8.¹⁹

These financial criteria – voluntarily agreed-upon without an agreement on a maximum deposit provision – properly address BellSouth's financial risks. BellSouth offers nothing in its Petition to prove otherwise. BellSouth does claim that, from its perspective, the absence of the ITC^DeltaCom terms (when coupled with the lower deposit cap) increases BellSouth's financial risk, but BellSouth provides no evidence to support this claim.²⁰ Notwithstanding the lack of any credible support, BellSouth's "perspective" is subjective in nature, and the Commission should rely more on an objective line of reasoning when rendering a decision (as it properly has with respect to this issue).

Since the beginning of negotiations, BellSouth has known of Joint Petitioners' desire for a lower maximum deposit provision and their willingness to arbitrate this issue, but

¹⁷ Attachment 7; Section 1.8.7.

¹⁸ Attachment 7; Section 1.8.8.

¹⁹ Attachment 7; Section 1.8.9.

²⁰ Petition at 3.

BellSouth nevertheless willingly agreed to the financial criteria noted above. If, as BellSouth asserts, the lesser deposit provision is inherently linked to the ITC^DeltaCom financial criteria, then it makes no sense that BellSouth, with the possibility of losing the issue in arbitration, agreed to the financial criteria in the subject agreement. In other words, BellSouth's argument defies its own logic. Knowing this issue would be arbitrated, and before agreeing to the above financial criteria, BellSouth surely assessed whether it could live with such criteria in the event of an unfavorable ruling. Otherwise, an agreement would not have been reached and the financial criteria would have become part of the arbitration issue. BellSouth's own actions undermine the credibility of its argument, and the Commission therefore should not be persuaded to reconsider its initial finding on this issue.

As demonstrated herein and previously, BellSouth has offered no sound basis for its discriminatory refusal to offer Joint Petitioners the same maximum deposit provision that it has voluntarily agreed to with ITC^DeltaCom. BellSouth used a similar argument when it sought reconsideration of Issue 101 in Kentucky's companion arbitration (the Kentucky Commission's finding on this issue²¹ was essentially the same as that reached by the Commission in its *Order Ruling on Arbitration*).²² The Kentucky Commission, however, did not agree with BellSouth, noting that the basis of its decision was not merely that BellSouth agreed to a similar deposit with another carrier. Moreover, the Kentucky Commission stated that it looked at Joint Petitioners' filings and, weighing the balance, believed that its initial finding for a maximum deposit not to exceed one month's billing for services billed in advance and two

²¹ See *Joint Petition for Arbitration of NewSouth Communications Corp. et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended*, Case No. 2004-00044, Order at 18-19 (KY P.S.C. Sept. 26, 2005) ("KY Initial Order").

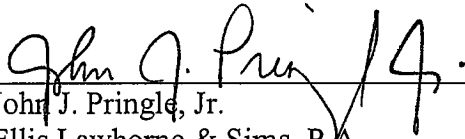
²² See BellSouth Motion for Reconsideration and Request for Oral Argument at 37-38, KPSC Docket No. 2004-00044 (Filed Oct. 18, 2005).

months' billing for services billed in arrears is an appropriate outcome for the arbitration proceeding.²³ The Kentucky Commission's reasoning in its orders on this issue is sound, and this Commission should conclude the same by affirming its initial decision through denial of BellSouth's request for reconsideration.

CONCLUSION

The foregoing considered, Joint Petitioners respectfully request that the Commission deny BellSouth's Petition for Reconsideration.

Respectfully submitted, this 2nd day of November, 2006.


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²³ See Joint Petition for Arbitration of NewSouth Communications Corp. et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended, Case No. 2004-00044, Order at 22-23 (KY P.S.C. March 14, 2006) ("KY Final Order").

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2005-57-C**

In the Matter of

**Joint Petition for Arbitration of
NewSouth Communications, Corp.,
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KMC Telecom V, Inc.,
KMC Telecom III LLC, and
Xspedius [Affiliates] of an
Interconnection Agreement with
BellSouth Telecommunications, Inc.
Pursuant to Section 252(b) of the
Communications Act of 1934,
as Amended**

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Opposition to Petition for Reconsideration** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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Carol Roof

November 2, 2006
Columbia, South Carolina